

1 SENATE BILL NO. 593

2 AMENDMENT IN THE NATURE OF A SUBSTITUTE

3 (Proposed by the House Committee for Courts of Justice

4 on _____)

5 (Patron Prior to Substitute--Senator Newman)

6 A BILL to amend and reenact §§ 15.2-1731, 15.2-1734, 15.2-1735, 15.2-1736, 37.2-808, and 37.2-810 of
7 the Code of Virginia, relating to custody and transportation of persons subject to emergency
8 custody orders or temporary detention process; alternative custody; auxiliary police officers.

9 **Be it enacted by the General Assembly of Virginia:**

10 **1. That §§ 15.2-1731, 15.2-1734, 15.2-1735, 15.2-1736, 37.2-808, and 37.2-810 of the Code of Virginia**
11 **are amended and reenacted as follows:**

12 **§ 15.2-1731. Establishment, etc., authorized; powers, authority and immunities generally.**

13 A. Localities, for the further preservation of the public peace, safety, and good order of the
14 community, may establish, equip, and maintain auxiliary police forces that have all the powers and
15 authority and all the immunities of full-time law-enforcement officers, if all such forces have met the
16 training requirements established by the Department of Criminal Justice Services under § 9.1-102.

17 B. Notwithstanding any other provision of this section, an auxiliary officer shall be exempted from
18 any initial training requirement established under § 9.1-102 until a date one year subsequent to the
19 approval by the Criminal Justice Services Board of compulsory minimum training standards for auxiliary
20 police officers, except that (i) any such officer shall not be permitted to carry or use a firearm while serving
21 as an auxiliary police officer unless such officer has met the firearms training requirements established in
22 accordance with in-service training standards for law-enforcement officers as prescribed by the Criminal
23 Justice Services Board, and (ii) any such officer shall have one year following the approval by the Board
24 to comply with the compulsory minimum training standards.

25 C. Auxiliary police forces established pursuant to this section, who have met the training
26 requirements of § 9.1-102, may be called into service by the chief law-enforcement officer as appropriate

27 to provide transportation for such person subject to an emergency custody order pursuant to § 37.2-808 or
28 to provide transportation for a person in the temporary detention process pursuant to § 37.2-810.

29 **§ 15.2-1734. Calling auxiliary police officers into service; police officers performing service**
30 **to wear uniform; exception.**

31 A. A locality may call into service or provide for calling into service such auxiliary police officers
32 as may be deemed necessary (i) in time of public emergency;² (ii) at such times as there are insufficient
33 numbers of regular police officers to preserve the peace, safety,² and good order of the community,²~~or~~² (iii)
34 to provide transportation for such person subject to an emergency custody order pursuant to § 37.2-808 or
35 to provide transportation for a person in the temporary detention process pursuant to § 37.2-810; or (iv) at
36 any time for the purpose of training such auxiliary police officers. At all times when performing such
37 service, the members of the auxiliary police force shall wear the uniform prescribed by the governing
38 body.

39 B. Members of any auxiliary police force who have been trained in accordance with the provisions
40 of § 15.2-1731 may be called into service by the chief of police of any locality to aid and assist regular
41 police officers in the performance of their duties, including providing transportation for such person
42 subject to an emergency custody order pursuant to § 37.2-808 or providing transportation for a person in
43 the temporary detention process pursuant to § 37.2-810.

44 C. When the duties of an auxiliary police officer are such that the wearing of the prescribed uniform
45 would adversely limit the effectiveness of the auxiliary police officer's ability to perform his prescribed
46 duties, then clothing appropriate for the duties to be performed may be required by the chief of police.

47 **§ 15.2-1735. Acting beyond limits of jurisdiction of locality.**

48 The members of any such auxiliary police force shall not be required to act beyond the limits of
49 the jurisdiction of any such locality except when called upon to protect any public property belonging to
50 the locality ~~which~~ that may be located beyond its boundaries, or as provided in § 15.2-1736, 37.2-808, or
51 37.2-810.

52 **§ 15.2-1736. Mutual aid agreements among governing bodies of localities.**

53 The governing bodies of localities, institutions of higher learning having a police force appointed
54 pursuant to subsection B of § 23.1-812, and institutions of higher education having a private police force,
55 as well as sheriffs, and the Director of the Department of Conservation and Recreation with commissioned
56 conservation officers, or any combination thereof may, by proper resolutions, enter in and become a party
57 to contracts or mutual aid agreements for the use of their joint forces, both regular and auxiliary, their
58 equipment and materials to maintain peace and good order, including providing transportation for such
59 person subject to an emergency custody order pursuant to § 37.2-808 or providing transportation for a
60 person in the temporary detention process pursuant to § 37.2-810. However, no such institution of higher
61 learning shall enter into such agreement with another institution of higher education in a noncontiguous
62 locality without the consent of all localities within which such institutions are located. Any police or other
63 law-enforcement officer, regular or auxiliary, while performing his duty under any such contract or
64 agreement, shall have the same authority in such locality as he has within the locality where he was
65 appointed.

66 In counties where no police department has been established, the sheriff may, in his discretion,
67 enter into mutual aid agreements as provided by this section.

68 **§ 37.2-808. Emergency custody; issuance and execution of order.**

69 A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating
70 physician, or upon his own motion, or a court may issue pursuant to § 19.2-271.6, an emergency custody
71 order when he has probable cause to believe that any person (i) has a mental illness and that there exists a
72 substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious
73 physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening
74 harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect
75 himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment,
76 and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. Any
77 emergency custody order entered pursuant to this section shall provide for the disclosure of medical
78 records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or
79 permitted by law.

80 When considering whether there is probable cause to issue an emergency custody order, the
81 magistrate may, in addition to the petition, or the court may pursuant to § 19.2-271.6, consider (1) the
82 recommendations of any treating or examining physician or psychologist licensed in Virginia, if available,
83 (2) any past actions of the person, (3) any past mental health treatment of the person, (4) any relevant
84 hearsay evidence, (5) any medical records available, (6) any affidavits submitted, if the witness is
85 unavailable and it so states in the affidavit, and (7) any other information available that the magistrate or
86 the court considers relevant to the determination of whether probable cause exists to issue an emergency
87 custody order.

88 B. Any person for whom an emergency custody order is issued shall be taken into custody and
89 transported to a convenient location to be evaluated to determine whether the person meets the criteria for
90 temporary detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment. The
91 evaluation shall be made by a person designated by the community services board who is skilled in the
92 diagnosis and treatment of mental illness and who has completed a certification program approved by the
93 Department.

94 C. The magistrate or court issuing an emergency custody order shall specify the primary law-
95 enforcement agency and jurisdiction to execute the emergency custody order and provide transportation.
96 However, the magistrate or court shall consider any request to authorize transportation by an alternative
97 transportation provider in accordance with this section, whenever an alternative transportation provider is
98 identified to the magistrate or court, which may be a person, facility, or agency, including a family member
99 or friend of the person who is the subject of the order, a representative of the community services board,
100 or other transportation provider with personnel trained to provide transportation in a safe manner, upon
101 determining, following consideration of information provided by the petitioner; the community services
102 board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any; or
103 other persons who are available and have knowledge of the person, and, when the magistrate or court
104 deems appropriate, the proposed alternative transportation provider, either in person or via two-way
105 electronic video and audio or telephone communication system, that the proposed alternative

106 transportation provider is available to provide transportation, willing to provide transportation, and able
107 to provide transportation in a safe manner.

108 When transportation is ordered to be provided by an alternative transportation provider, the
109 magistrate or court shall order the specified primary law-enforcement agency to execute the order, to take
110 the person into custody, and to transfer custody of the person to the alternative transportation provider
111 identified in the order. In such cases, a copy of the emergency custody order shall accompany the person
112 being transported pursuant to this section at all times and shall be delivered by the alternative
113 transportation provider to the community services board or its designee responsible for conducting the
114 evaluation. The community services board or its designee conducting the evaluation shall return a copy of
115 the emergency custody order to the court designated by the magistrate or the court that issued the
116 emergency custody order as soon as is practicable. Delivery of an order to a law-enforcement officer or
117 alternative transportation provider and return of an order to the court may be accomplished electronically
118 or by facsimile.

119 Transportation under this section shall include transportation to a medical facility as may be
120 necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in
121 accordance with state and federal law. Transportation under this section shall include transportation to a
122 medical facility for a medical evaluation if a physician at the hospital in which the person subject to the
123 emergency custody order may be detained requires a medical evaluation prior to admission.

124 D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,
125 the magistrate or court shall order the primary law-enforcement agency from the jurisdiction served by
126 the community services board that designated the person to perform the evaluation required in subsection
127 B to execute the order and, in cases in which transportation is ordered to be provided by the primary law-
128 enforcement agency, provide transportation. If the community services board serves more than one
129 jurisdiction, the magistrate or court shall designate the primary law-enforcement agency from the
130 particular jurisdiction within the community services board's service area where the person who is the
131 subject of the emergency custody order was taken into custody or, if the person has not yet been taken

132 into custody, the primary law-enforcement agency from the jurisdiction where the person is presently
133 located to execute the order and provide transportation.

134 E. The law-enforcement agency or alternative transportation provider providing transportation
135 pursuant to this section may transfer custody of the person to the facility or location to which the person
136 is transported for the evaluation required in subsection B, G, or H if the facility or location (i) is licensed
137 to provide the level of security necessary to protect both the person and others from harm, (ii) is actually
138 capable of providing the level of security necessary to protect the person and others from harm, and (iii)
139 in cases in which transportation is provided by a law-enforcement agency, has entered into an agreement
140 or memorandum of understanding with the law-enforcement agency setting forth the terms and conditions
141 under which it will accept a transfer of custody, provided, however, that the facility or location may not
142 require the law-enforcement agency to pay any fees or costs for the transfer of custody.

143 F. A law-enforcement officer may lawfully go or be sent beyond the territorial limits of the county,
144 city, or town in which he serves to any point in the Commonwealth for the purpose of executing an
145 emergency custody order pursuant to this section.

146 G. A law-enforcement officer who, based upon his observation or the reliable reports of others,
147 has probable cause to believe that a person meets the criteria for emergency custody as stated in this
148 section may take that person into custody and transport that person to an appropriate location to assess the
149 need for hospitalization or treatment without prior authorization. A law-enforcement officer who takes a
150 person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the
151 territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the
152 purpose of obtaining the assessment. Such evaluation shall be conducted immediately. The period of
153 custody shall not exceed eight hours from the time the law-enforcement officer takes the person into
154 custody.

155 H. A law-enforcement officer who is transporting a person who has voluntarily consented to be
156 transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial limits
157 of the county, city, or town in which he serves may take such person into custody and transport him to an
158 appropriate location to assess the need for hospitalization or treatment without prior authorization when

159 the law-enforcement officer determines (i) that the person has revoked consent to be transported to a
160 facility for the purpose of assessment or evaluation, and (ii) based upon his observations, that probable
161 cause exists to believe that the person meets the criteria for emergency custody as stated in this section.
162 The period of custody shall not exceed eight hours from the time the law-enforcement officer takes the
163 person into custody.

164 I. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider
165 from obtaining emergency medical treatment or further medical evaluation at any time for a person in his
166 custody as provided in this section.

167 J. A representative of the primary law-enforcement agency specified to execute an emergency
168 custody order or a representative of the law-enforcement agency employing a law-enforcement officer
169 who takes a person into custody pursuant to subsection G or H shall notify the community services board
170 responsible for conducting the evaluation required in subsection B, G, or H as soon as practicable after
171 execution of the emergency custody order or after the person has been taken into custody pursuant to
172 subsection G or H.

173 K. The person shall remain in custody until (i) a temporary detention order is issued in accordance
174 with § 37.2-809, (ii) an order for temporary detention for observation, testing, or treatment is entered in
175 accordance with § 37.2-1104, ending law enforcement custody, (iii) the person is released, or (iv) the
176 emergency custody order expires. An emergency custody order shall be valid for a period not to exceed
177 eight hours from the time of execution.

178 L. Nothing in this section shall preclude the issuance of an order for temporary detention for
179 testing, observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an
180 emergency custody order issued pursuant to this section. In any case in which an order for temporary
181 detention for testing, observation, or treatment is issued for a person who is also the subject of an
182 emergency custody order, the person may be detained by a hospital emergency room or other appropriate
183 facility for testing, observation, and treatment for a period not to exceed 24 hours, unless extended by the
184 court as part of an order pursuant to § 37.2-1101, in accordance with subsection C of § 37.2-1104. Upon
185 completion of testing, observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or

186 other appropriate facility in which the person is detained shall notify the nearest community services
187 board, and the designee of the community services board shall, as soon as is practicable and prior to the
188 expiration of the order for temporary detention issued pursuant to § 37.2-1104, conduct an evaluation of
189 the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809.

190 M. Any person taken into emergency custody pursuant to this section shall be given a written
191 summary of the emergency custody procedures and the statutory protections associated with those
192 procedures.

193 N. If an emergency custody order is not executed within eight hours of its issuance, the order shall
194 be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is
195 not open, to any magistrate serving the jurisdiction of the issuing court.

196 O. In addition to the eight-hour period of emergency custody set forth in subsection G, H, or K, if
197 the individual is detained in a state facility pursuant to subsection E of § 37.2-809, the state facility and
198 an employee or designee of the community services board as defined in § 37.2-809 may, for an additional
199 four hours, continue to attempt to identify an alternative facility that is able and willing to provide
200 temporary detention and appropriate care to the individual.

201 P. Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical
202 screening and assessment services provided to persons with mental illnesses while in emergency custody.

203 Q. No person who provides alternative transportation pursuant to this section shall be liable to the
204 person being transported for any civil damages for ordinary negligence in acts or omissions that result
205 from providing such alternative transportation.

206 R. For purposes of this section:

207 "Law-enforcement agency" includes an auxiliary police force established pursuant to § 15.2-1731;

208 and

209 "Law-enforcement officer" includes an auxiliary police officer appointed or provided for pursuant
210 to §§ 15.2-1731 and 15.2-1733.

211 **§ 37.2-810. Transportation of person in the temporary detention process.**

212 A. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,
213 the magistrate shall specify in the temporary detention order the law-enforcement agency of the
214 jurisdiction in which the person resides, or any other willing law-enforcement agency that has agreed to
215 provide transportation, to execute the order and, in cases in which transportation is ordered to be provided
216 by the primary law-enforcement agency, provide transportation. However, if the nearest boundary of the
217 jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the jurisdiction
218 in which the person is located, the law-enforcement agency of the jurisdiction in which the person is
219 located shall execute the order and provide transportation.

220 B. The magistrate issuing the temporary detention order shall specify the law-enforcement agency
221 to execute the order and provide transportation. However, the magistrate shall consider any request to
222 authorize transportation by an alternative transportation provider in accordance with this section,
223 whenever an alternative transportation provider is identified to the magistrate, which may be a person,
224 facility, or agency, including a family member or friend of the person who is the subject of the temporary
225 detention order, a representative of the community services board, or other transportation provider with
226 personnel trained to provide transportation in a safe manner upon determining, following consideration of
227 information provided by the petitioner; the community services board or its designee; the local law-
228 enforcement agency, if any; the person's treating physician, if any; or other persons who are available and
229 have knowledge of the person, and, when the magistrate deems appropriate, the proposed alternative
230 transportation provider, either in person or via two-way electronic video and audio or telephone
231 communication system, that the proposed alternative transportation provider is available to provide
232 transportation, willing to provide transportation, and able to provide transportation in a safe manner.

233 When transportation is ordered to be provided by an alternative transportation provider, the
234 magistrate shall order the specified law-enforcement agency to execute the order, to take the person into
235 custody, and to transfer custody of the person to the alternative transportation provider identified in the
236 order.

237 In such cases, a copy of the temporary detention order shall accompany the person being
238 transported pursuant to this section at all times and shall be delivered by the alternative transportation

239 provider to the temporary detention facility. The temporary detention facility shall return a copy of the
240 temporary detention order to the court designated by the magistrate as soon as is practicable. Delivery of
241 an order to a law-enforcement officer or alternative transportation provider and return of an order to the
242 court may be accomplished electronically or by facsimile.

243 The order may include transportation of the person to such other medical facility as may be
244 necessary to obtain further medical evaluation or treatment prior to placement as required by a physician
245 at the admitting temporary detention facility. Nothing herein shall preclude a law-enforcement officer or
246 alternative transportation provider from obtaining emergency medical treatment or further medical
247 evaluation at any time for a person in his custody as provided in this section. Such medical evaluation or
248 treatment shall be conducted immediately in accordance with state and federal law.

249 C. If an alternative transportation provider providing transportation of a person who is the subject
250 of a temporary detention order becomes unable to continue providing transportation of the person at any
251 time after taking custody of the person, the primary law-enforcement agency for the jurisdiction in which
252 the alternative transportation provider is located at the time he becomes unable to continue providing
253 transportation shall take custody of the person and shall transport the person to the facility of temporary
254 detention. In such cases, a copy of the temporary detention order shall accompany the person being
255 transported and shall be delivered to and returned by the temporary detention facility in accordance with
256 the provisions of subsection B.

257 D. In cases in which an alternative facility of temporary detention is identified and the law-
258 enforcement agency or alternative transportation provider identified to provide transportation in
259 accordance with subsection B continues to have custody of the person, the local law-enforcement agency
260 or alternative transportation provider shall transport the person to the alternative facility of temporary
261 detention identified by the employee or designee of the community services board. In cases in which an
262 alternative facility of temporary detention is identified and custody of the person has been transferred from
263 the law-enforcement agency or alternative transportation provider that provided transportation in
264 accordance with subsection B to the initial facility of temporary detention, the employee or designee of
265 the community services board shall request, and a magistrate may enter an order specifying, an alternative

266 transportation provider or, if no alternative transportation provider is available, willing, and able to provide
267 transportation in a safe manner, the local law-enforcement agency for the jurisdiction in which the person
268 resides or, if the nearest boundary of the jurisdiction in which the person resides is more than 50 miles
269 from the nearest boundary of the jurisdiction in which the person is located, the law-enforcement agency
270 of the jurisdiction in which the person is located, to provide transportation.

271 E. The magistrate may change the transportation provider specified in a temporary detention order
272 at any time prior to the initiation of transportation of a person who is the subject of a temporary detention
273 order pursuant to this section. If the designated transportation provider is changed by the magistrate at any
274 time after the temporary detention order has been executed but prior to the initiation of transportation, the
275 transportation provider having custody of the person shall transfer custody of the person to the
276 transportation provider subsequently specified to provide transportation. For the purposes of this
277 subsection, "transportation provider" includes both a law-enforcement agency and an alternative
278 transportation provider.

279 F. A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the
280 county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing
281 any temporary detention order pursuant to this section. Law-enforcement agencies may enter into
282 agreements to facilitate the execution of temporary detention orders and provide transportation.

283 G. No person who provides alternative transportation pursuant to this section shall be liable to the
284 person being transported for any civil damages for ordinary negligence in acts or omissions that result
285 from providing such alternative transportation.

286 H. For purposes of this section:

287 "Law-enforcement agency" includes an auxiliary police force established pursuant to § 15.2-1731;

288 and

289 "Law-enforcement officer" includes an auxiliary police officer appointed or provided for pursuant
290 to §§ 15.2-1731 and 15.2-1733.

291 **2. That, pursuant to subdivision 11 of § 9.1-102 of the Code of Virginia, the Department of Criminal**
292 **Justice Services, when establishing compulsory minimum training standards for auxiliary police**

293 officers who are called into service solely for the purpose of providing transportation for such
294 person subject to an emergency custody order pursuant to § 37.2-808 of the Code of Virginia, as
295 amended by this act, or to provide transportation for a person in the temporary detention process
296 pursuant to § 37.2-810 of the Code of Virginia, as amended by this act, shall be limited to
297 establishing such compulsory minimum training standards to courses related to weapons, defensive
298 tactics, de-escalation techniques, and working with individuals with disabilities, mental health
299 needs, or substance use disorders.

300 #